

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into this 8th day of February 2001, by and between the City of Lincoln, Nebraska, a municipal corporation (hereinafter sometimes referred to as the "City"), and the Lincoln Chamber Economic Development Corporation, a Nebraska nonprofit corporation, formerly known as the Lincoln Chamber Industrial Development Corporation (hereinafter referred to as "LCEDC"):

WITNESSETH:

WHEREAS, Article IV, Section 12 of the Charter of the City of Lincoln authorizes and requires the Mayor of the City to encourage commercial and industrial growth in the City;

WHEREAS, Neb. Rev. Stat. §13-315 (Reissue 1997) authorizes the City to expend annually from the General Fund an amount not to exceed four tenths of one percent (.4%) of the taxable valuation of the City, either directly or through local development corporations, to encourage immigration, new industries, and investments and to conduct and carry out publicity campaigns, to exploit and advertise the various agricultural, horticultural, manufacturing, commercial and other resources, including utility services available within the city;

WHEREAS, the City and LCEDC have joined in a public-private cooperative agreement to establish and operate the Lincoln Partnership for Economic Development as a separate operating division of LCEDC (hereinafter the "Partnership") to encourage and promote economic development within the City; and

WHEREAS, the City and LCEDC now desire to continue the existence and operation of the Partnership:

NOW, THEREFORE, in consideration for their respective agreements and undertakings, as herein set forth, the sufficiency of which are hereby acknowledged, the City and LCEDC agree as follows:

1. **Agreement to Continue Partnership.** For and during the term of this Agreement, LCEDC hereby agrees to maintain the existence of the Partnership as a separate operating division of LCEDC and to operate the Partnership for the purpose of promoting economic development within

the City upon the terms and subject to the conditions set forth in this Agreement.

2. **Steering Committee.** The operations and affairs of the Partnership shall be governed by a steering committee composed of eleven (11) members (the "Steering Committee"). The Mayor of the City and the Chairman of LCEDC shall be *ex officio* members and joint chairmen of the Steering Committee. The Partnership Administrator, as hereinafter defined, shall be an *ex officio* member of the Steering Committee. Three (3) members of the Steering Committee shall be appointed by the Mayor of the City; three (3) members of the Steering Committee shall be appointed by the Chairman of LCEDC, and the remaining two (2) members of the Steering Committee shall be appointed by the Partnership Administrator, as hereinafter defined, from the Investment Council Subcommittee of LCEDC. The proposed agenda for all meetings of the Steering Committee shall be prepared in advance by the Partnership Administrator and provided to the joint chairs by hand delivery, facsimile, or email within seventy-two (72) hours prior to the meeting. Either co-chair shall have the right to suggest changes to the agenda. The failure of a co-chair to object to any agenda item within forty-eight (48) hours following receipt shall be deemed to constitute an approval of the agenda.
3. **Partnership Administrator and Staff.** LCEDC shall provide an individual to serve as the Partnership Administrator (the "Partnership Administrator"). The Partnership Administrator shall serve as the principal executive officer of the Partnership and, subject to the direction and control of the Steering Committee, shall be responsible for the general management and operation of the Partnership, including the administration of this Agreement and the management, investment and disbursement of Partnership assets. In addition, LCEDC shall provide the professional and clerical staff necessary or appropriate to the operation of the Partnership as contemplated in this Agreement. LCEDC shall make staff assigned to the Partnership available to the City, upon request and reasonable prior notice, to attend meetings, make presentations and coordinate economic development projects. All costs associated with the staff provided by LCEDC hereunder shall be reflected in the Annual Partnership Budget as hereinafter defined, and shall be reimbursed to LCEDC from the funding provided by LCEDC and the City pursuant to Paragraph 8 hereof.

4. **Project Goals.** The "Goals" of the Partnership shall be as follows:

- A. Business Recruitment and Expansion - to coordinate the community response to firms expressing an interest in locating or expanding in the Lincoln area, and to encourage development and expansion in conformity with the City's Comprehensive Plan as the same now exists or may from time to time hereinafter be revised.
- B. Work Force Development and Readiness - to assist firms in recruiting qualified candidates in Lincoln, improve linkages between employers, the labor pool, and educational institutions and to publicize the various work/study programs available at secondary and post-secondary institutions in Lincoln.
- C. Business/University Linkages - to develop a stronger link with the leadership of the University of Nebraska and consider ways to reward it's faculty for initiating and assisting in business development, product development and technology transfer.
- D. Marketing/Business Development Activities - to develop a marketing program to assist in projecting a positive image of Lincoln for use in regional and national recruitment efforts, including the development and updating of brochures, website materials and multimedia presentations to promote the City.
- E. Business Round Table/Networking - to establish regular industry or skill-based focus groups for networking, problem identification, and group action items and, when appropriate, to develop symposia to address current economic issues affecting Lincoln and the surrounding area.
- F. Infrastructure/Transportation - to facilitate transportation of goods and products by working with the Airport Authority of the City of Lincoln to improve air service to the community; to support and encourage improvements to the highway system serving the City; and to identify the location of available infrastructure, including fiber optic technology necessary to meet the needs of new and expanding business development.
- G. Business Finance/Capital Development - to assist companies in meeting capital needs through identification of venture capital

sources, loan programs, and tax incentives available within Nebraska.

- H. Regional Outreach/Cooperation – to establish liaisons with other regional economic development entities, including leadership groups in Omaha and other nearby communities.
 - I. Land Use/Infrastructure – to assist the City in identifying and classifying adequate land for commercial/industrial use.
 - J. General Business Development – to generally undertake and engage in activities which are appropriate to promote the industrial expansion and economic development of the City of Lincoln.
5. **The Annual Program of Projects/Annual Partnership Budget.** The Partnership's fiscal year, for programmatic purposes (the "Program Year"), shall commence on September 1 of each year, and shall end at the close of business on August 31 of the next following year. On or before the first day of June, the Partnership shall prepare and submit to the City and LCEDC a written statement of the programs and projects which the Partnership proposes to undertake and carry out during the next Program Year (the "Annual Program of Projects"). The Annual Program of Projects shall set forth the specific programs and projects which the Partnership intends to undertake for that Program Year and the goal or goals, as identified in paragraph 4 above, which each such program or project is intended to address. In addition, on or before the first day of June, the Partnership shall submit to the City and LCEDC a budget of expenditures which sets forth in detail the expenses which the Partnership anticipates incurring in connection with its operation for the next Program Year (the Annual Partnership Budget).

The City and LCEDC shall approve the Annual Program of Projects and the Annual Partnership Budget each year on or before the commencement of the next following Program Year.

6. **Strategic Planning.** The City and LCEDC agree that the Annual Program of Projects for the first Program Year commencing on or after the date of this Agreement shall include a strategic planning project designed to identify and evaluate the needs of the City in terms of current and anticipated industrial growth and economic development and to establish the goals and objectives for the Partnership which are consistent therewith, designed to address the identified needs, and which are

consistent with the Comprehensive Plan as the same now exists and may from time to time hereinafter be amended.

7. **Activity Report and Evaluation.** Each year, at the time the Annual Program of Projects is submitted, the Partnership shall also submit a detailed report and evaluation of the work performed by the Partnership during the then current Program Year, and an evaluation of its effectiveness in addressing the goals, identified in paragraph 4 of this Agreement.
8. **Funding.** With respect to each Program Year of the Partnership which commences during the term of this Agreement, the City and LCEDC shall fund the Annual Partnership Budget as follows:
 - A. The City shall fund forty five and 455/1000 percent (45.455%) of the Annual Partnership Budget for each Program Year up to a maximum amount of Two Hundred and Fifty Thousand Dollars (\$250,000). Funding shall occur through the appropriation of General Fund revenue, and the amounts so appropriated shall be paid in two (2) equal, semi-annual installments on or before January 1 and June 1 of each Program Year;
 - B. LCEDC shall fund fifty four and 545/100 percent (54.545%) of the Annual Partnership Budget up to a maximum amount of Three Hundred Thousand Dollars (\$300,000) through donations and/or in kind contributions.

On or before May 1 of each year during the term of this Agreement, LCEDC shall provide the City with evidence, acceptable to the City, in its reasonable discretion, that LCEDC has received donations and/or pledges for in kind contributions which are, in the aggregate, sufficient to meet LCEDC's funding obligation as set forth in subparagraph (b) above for the next following Program Year. (For purposes of this Agreement, in kind contributions shall be professional services approved by the City and valued at the regular billing rate of the contributor). In the event that LCEDC is unable to secure donations and/or pledges for in kind contributions which are, in the aggregate, sufficient to meet its funding obligations with respect to the Annual Partnership Budget for any Program Year then, in that event, the City's obligations to fund the Annual Partnership Budget for that Program Year shall be reduced proportionately and the Annual Program of Projects and Annual Partnership Budget for that Program Year will be revised to reflect the aggregate funds available.

LCEDC's financial obligations hereunder shall be limited solely to the contributions raised by LCEDC pursuant to the provisions of this paragraph and specifically designated for the Partnership's budget.

Payments to be made by the City pursuant to this Agreement shall be paid upon the City's Finance Director's receipt of invoices from the Partnership Administrator requesting that payment be made.

If, at the conclusion of any Program Year, the Partnership has unexpended and unobligated funds, such funds shall be carried forward to the next Program Year and applied to the Annual Partnership Budget for that Program Year.

9. **Audit.** All Partnership assets shall be maintained in separate accounts. The City Auditor shall have the right to inspect all Partnership work, materials, payroll records, personnel records, materials invoices, and other relevant data, documents and records, and to audit the books, records, and accounts of the Partnership and LCEDC insofar as such materials, books, records and accounts pertain to services rendered by the Partnership. Said audit, insofar as it relates to LCEDC, shall be separate from and independent of any audit of the general activities of LCEDC.
10. **Independent Contractor.** The City is interested only in the results obtained by the Partnership under this Agreement. As such, the relationship between the City and LCEDC and the relationship between the City and the Partnership shall be that of an independent contractor and shall not be deemed or construed to constitute a partnership or joint venture. LCEDC and the Partnership shall have the sole and exclusive control of all persons employed by the Partnership to perform services in connection with this Agreement and LCEDC and the Partnership shall have exclusive control over the manner, means and methods by which all services which are to be provided by the Partnership under this Agreement are performed. No employee or agent of LCEDC or the Partnership shall be deemed to be an employee or agent of the City, and no employee or agent of the City shall be deemed to be an employee or agent of LCEDC or the Partnership. LCEDC and the Partnership shall be solely responsible for the payment of all wages or other compensation or benefits which may at any time during the term of this Agreement become due or payable to their employees, and LCEDC and the Partnership shall be solely responsible for the withholding and payment of all state and federal income taxes, and all social security benefits, including FICA and FUTRA,

which may be required to be withheld or paid with respect to their employees.

11. **Term; Extension.** This Agreement shall be for a term of three (3) years commencing on September 1, 2001 and ending on August 31, 2004, unless terminated earlier as hereinafter provided. Extensions of the term of this Agreement, if any, shall be negotiated by the parties at least one year prior to the then current date of termination.
12. **Events of Default.** The following shall be events of default of this Agreement:
 - A. Material failure in the observance or performance of any condition, covenant, or obligation set forth in this Agreement for a period of sixty (60) days after written notice to the party failing to observe or perform from the other party specifying the nature thereof.
 - B. The entry of any order or final decree by a court of competent jurisdiction enjoining or prohibiting LCEDC, the City and/or the Partnership from performing or satisfying their respective obligations under this Agreement if such order or decree is not vacated or appealed within sixty (60) days after the entry thereof.
 - C. LCEDC and/or the City becoming insolvent or unable to pay its or their debts as they mature or making an assignment for the benefit of creditors.
 - D. Failure of the City and LCEDC to approve the Annual Program of Projects and the Annual Partnership Budget for any Program Year on or before the 31st day of August immediately preceding the commencement of such Program Year.
 - E. Failure of LCEDC to meet its funding obligation for any Program Year as set forth in paragraph 8 above on or before the 1st day of May immediately preceding the commencement of such Program Year.
 - F. Failure of the City to appropriate or pay the amounts required to be paid by it pursuant to paragraph 8 hereof.
13. **Termination.** If any of the events of default set forth above shall occur and the defaulting party fails to cure the same within the time period (if

any) herein provided, then the sole remedy of the non-defaulting party shall be the right to terminate this Agreement by giving written notice to the other party of such termination at least seven (7) days before the effective date of such termination. In the event of termination under this paragraph, the City shall pay to the Partnership its proportionate share of any sums necessary to meet all outstanding debts, contractual obligations and other commitments incurred by the Partnership pursuant to this Agreement prior to the effective date of such termination. In the event any project funds remain unobligated after the payment of all debts, obligations and commitments, the Partnership shall repay the City and LCEDC their proportionate share of such unobligated funds.

14. **Equal Employment Opportunity.** In connection with the performance of work under this Agreement, LCEDC and the Partnership agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In employing individuals under this Agreement to perform services on behalf of the Partnership, LCEDC shall comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code and shall take affirmative action to ensure that applicants are employed and treated during employment without regard to their race, color, religion, sex, disability, national origin, age or marital status. LCEDC shall submit an Affirmative Action Program Information Sheet to the City's Equal Opportunity Officer upon a form prescribed by the City.
15. **Ownership, Publication, Reproduction and Use of Material.** All reports, studies, information, data, statistics, promotional materials, and any other materials or properties produced under this Agreement shall be jointly available to the City and LCEDC with full and unrestricted rights of either party to publish, disclose, distribute and otherwise use, in whole or in part, any such reports, studies, information, data, statistics, or promotional materials produced under this Agreement. The copyright of any such material shall be held jointly in the name of both parties.
16. **City Representative.** Except as to appropriations required to fund the City's commitments to the Partnership pursuant to the terms of this Agreement, the Mayor of the City of Lincoln or his/her designee shall be the authorized representative of the City responsible for carrying out the terms of this Agreement on behalf of the City.

17. **LCEDC Representative.** The Chairman of LCEDC or his/her designee shall be the authorized representative of LCEDC, responsible for carrying out the terms of this Agreement on behalf of LCEDC.
18. **Partnership Representative.** The Partnership Administrator shall be the representative of the Partnership, responsible for carrying out the terms of this Agreement on behalf of the Partnership. Individuals assigned by LCEDC to perform services on behalf of the Partnership shall be available at reasonable times and upon reasonable prior notice to attend meetings and consult with the Mayor, the Chairman of LCEDC and/or their respective designees for purposes of information, coordination and liaison.
19. **Entire Agreement.** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and for and during its term, this Agreement shall supercede and replace all prior understandings or agreements, whether written or oral, between the parties with respect thereto.
20. **Amendment.** This Agreement shall not be amended except by written amendment executed by duly authorized representatives of the parties hereto.
21. **Notices.** Any notice provided hereunder shall be properly served if mailed by certified mail, U.S. postage prepaid:

To the City:
c/o Office of the Mayor
555 South 16th Street
Lincoln, NE 68508

To LCEDC:
c/o Partnership Administrator
Lincoln Chamber of Commerce
1135 M Street, Suite 200
Lincoln, NE 68508

22. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

THE CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

Attest:

City Clerk

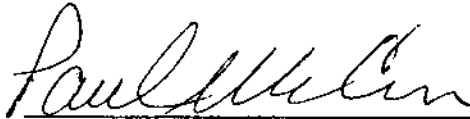
By



Mayor

LINCOLN CHAMBER ECONOMIC
DEVELOPMENT CORPORATION,
a Nebraska Non-Profit Corporation

Attest:



Secretary

By



Chairman